

LABOUR DEPARTMENT

The 15th April, 1975

No. 3655-4L-75/12602.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Municipal Committee, Bawal, District Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 75 of 1974

between

SHRI RISHI RAM, WORKMAN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE,
BAWAL, DISTRICT GURGAON

Present:—

Shri C.B. Kaushik, for the workman.

Shri H.R. Dua, for the management.

AWARD

Shri Rishi Ram workman concerned was in the service of the Municipal Committee, Bawal (now Notified Area Committee Bawal), District Gurgaon as an Octroi Moharrir since 18th May, 1959. The Committee terminated his services, — vide resolution No. 1013, dated 23rd June, 1972. He filed an appeal against this decision which was dismissed by the learned Deputy Commissioner, Gurgaon on 1st December, 1972. Feeling aggrieved, he gave the demand notice to the Committee seeking reinstatement, with continuity of his previous service and full back wages, which was not accepted. The matter was taken up for conciliation which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the above dispute for adjudication to this Tribunal,—vide order No. ID/FD/74/164/15965, dated 7th June, 1974, with the following term of reference:—

Whether the termination of services of Shri Rishi Ram was justified and in order? If not, to what relief is he entitled?

The parties put in their respective pleadings. Shri Rishi Ram, workman concerned reiterated his demand for reinstatement and payment of back wages as earlier raised through the demand notice leading to the present reference containing that the termination of his services had been brought about illegally and unlawfully by way of retrenchment without paying him any compensation and ignoring his right of seniority. According to him, the impugned order was illegal, unlawful, malafide and deserved to be set aside.

The respondent Committee contravened the above allegations of the workman and contested his claim alleging that it was a case of discharge simpliciter and not of termination by way of punishment or otherwise and as such the workman was not entitled to any relief. It was *inter alia* pleaded that the Octroi Department of the respondent Committee was no any industry and Shri Rishi Ram was not a workman, as defined under section 2(s) of the Industrial Disputes Act and, therefore, the reference was bad in law. It was further urged that the demand had not been properly raised so as to constitute an industrial dispute within the meaning of the law. A plea of *res-judicata* was also taken.

From the pleadings of the parties the following five issues arose for the determination in the case:

- (1) Whether the notified Area Committee Bawal is not an industry and Shri Rishi Ram Sharma complainant is not a workman, as defined under the Industrial Disputes Act, 1947? (on management)
- (2) Whether the present reference is barred by the principle of *res-judicata*? (on management)
- (3) Whether the demand and the subject matter of the present reference, was first raised on the management and rejected by it before taking up the matter for conciliation? If not with what effect?

- (4) Whether it is a case of discharge simpliciter and not retrenchment of the services of the workman as alleged by him? (on management)
- (5) Whether the termination of services of Shri Rishi Ram was justified and in order? If not, to what relief is he entitled?

The respondent Committee examined its Secretary Shri Ram Chander Bhatnagar and placed on record an unattested copy of the order dated 1st December, 1972 dismissing his appeal Exhibit M-1, copy of the resolution No. 1018, dated 23rd June, 1972 Exhibit M-2, copy of the notice received from the Conciliation Officer Exhibit M-3, copy of the demand notice Exhibit M-4, attested copy of the order dated 1st December, 1972 dismissing his appeal Exhibit M-5.

On the other hand the workman, besides making his own statement, relied upon 7 documents including the letter, dated 14th December, 1972 addressed by him to the President of the Committee, Exhibit W. 1, postal receipt Exhibit W-2, A. D. receipt Exhibit W.3, notice dated 27th December, 1972, Exhibit W. 4, letter, dated 10th January, 1973. Exhibit W. 5, certificate of Posting Exhibit W-6 and the demand notice which forms part of the reference Exhibit W-7.

In view of the recent Judgment of the Punjab and Haryana High Court holding the Octroi Department of the Municipal Committee to be an industry, preliminary issue No. 1 was not pressed and taking into consideration the evidence adduced on both sides oral as well as documentary. Issues Nos. 2 and 3 were also decided against the respondent Committee and in favour of the workman.

After the decision of the preliminary issues Nos. 1, 2 and 3 against the respondent Committee,—*vide* order, dated 1st January, 1975, the parties were called upon to produce their evidence on issues Nos. 4 and 5 on merits, which are more or less inter-related. Shri Ram Chander Secretary of the respondent Committee has again come into the witness box and the workman concerned has also made his statement without producing any further documents.

The parties have filed a written argument. The learned representative of the respondent Committee has also placed on record a written statement of Shri Ram Chander Bhatnagar, Secretary and a copy of the Board's order dated 1st December, 1972. I have very carefully gone through the written arguments filed on both sides and given a very careful and considered thought to the material on record, oral as well as documentary. It is common ground between the parties that Shri Rishi Ram workman concerned was an old and permanent employee of the respondent Committee, having joined services as Octroi Moharrir on 18th May, 1959 according to him. The Secretary of the respondent Committee has also admitted that he had put in service for about 14 years before he was discharged. As per the averments made in the statement of claim by Shri Rishi Ram his services had been illegally terminated by way of retrenchment. No retrenchment order has been placed on record and the case of the respondent Committee, on the other hand, is that he was simply discharged from service by a resolution of the Committee. The question which is of vital importance and arises for determination in the case is whether the termination of the services of the workman brought about by the respondent Committee, whether by discharge or otherwise, was justified and in order and if not, what relief is he entitled to. The main argument advanced on behalf of the respondent Committee is that the impugned order being one of mere discharge from service without attaching any stigma to the workman is unassailable. I am afraid, the contention is simply devoid of force in the context of the facts of the instant case. As already pointed out, Shri Rishi Ram had put in service against a permanent post for 14 years or so before the impugned order was passed. The seniority list of the Octroi Moharrir including Sarvshri Sis Ram, Ram Parshad, Sat Narain, Udaya Ram and Om Parkash Chaturvedi is on record having been filed by the workman as annexure 'A'. Shri Ram Chand Bhatnagar Secretary of the respondent committee in his statement recorded on 14th February, 1975 while not denying specifically that Shri Rishi Ram was senior to all the above-named Octroi Mkharrirs has simply shown his ignorance on this point but admitted that the other 5 Octroi Moharrirs are still in service. In fact, Shri Om Parkash Chaturvedi was, according to him, appointed in place of Shri Rishi Ram. He has further expressed his ignorance as to far what reasons and on what grounds Shri Rishi Ram was discharged from service. The resolution of the Committee referred to above is also silent on this point. It merely states that the case of Shri Rishi Ram was considered and the Committee was of the unanimous opinion that his services were no longer required and he should be discharged under section 45 of the Punjab Municipal Act, 1911 after payment of notice pay for one month to him.

It would thus appear that the services of the present workman who had been discharging the duties of the Octroi Moharrir for the last 14 years or so had been dispensed with by the respondent Committee without assigning any reason, what to speak of giving him any charge-sheet or holding any enquiry into any allegation of misconduct against him. The contention of the workman that the then President of the respondent Committee wanted to appoint his own relation Shri Om Parkash Chaturvedi, who is admittedly working as Octroi Moharrir in his place, and as such the impugned order was *malafide* may not be correct so far as it goes because he has led no corroborative evidence to prove the alleged relationship between the then President of the respondent Committee and Shri Om Parkash Chaturvedi Octroi Moharrir while Shri Ram Chander Bhatnagar Secretary of the Committee has filed an affidavit denying the alleged relationship between the two. Even then, the respondent Committee was called upon to make out a good and reasonable

case for throwing out of service this permanent employee of 14 years standing. The resolution as, already observed, simply states that his case was considered by the Committee. It does not show what was that case, whether there were any allegations against his work, conduct or integrity or he was not fit to be retained in service as an Octroi Moharir for any other reason. His service book has not been placed on record nor it has been shown that there were any adverse confidential reports against him. The law has undergone a vast change in the past. The right of an employer "to hire and fire" his employee has been subjected to severe restraint and the employee's right of tenure has been fully secured. It is needless to say that security of service is the most important thing in the life of a workman and there would be no security of service if the employer is given the unfettered right to dispense with the service of his employee according to his own aims and wishes without establishing anything against the employee which would render him unfit for service.

The learned representative of the respondent Committee has vehemently argued that it being a case of discharge simpliciter under section 45 of the Punjab Municipal Act, 1911, the respondent Committee was not called upon to assign any reason for taking this action against Shri Rishi Ram and since the order has not been passed by way of punishment it does not attach any stigma against him nor was it necessary to hold any enquiry when there was no charge of misconduct levelled against him by the Committee. The contention is again devoid of force. Section 45 of the Punjab Municipal Act, 1911 does not provide any grounds to justify an order of discharge of an employee. It only contemplates payment of one month's notice pay even in a case of discharge. The respondent Committee was required to bring on record cogent and convincing evidence to justify the order of discharge which has been passed without assigning any reason. The question of holding any enquiry against the present workman did, of course, not arise. As it is the respondent Committee who had probably nothing to enquire against him. He has been thrown out of service without any rhyme or reason. Being about 45 years of age he is unable to secure any other suitable job to maintain himself and his family. The case might have been different if he was only a casual worker or a probationer or his service was of temporary nature, terminable at any time with or without notice.

There is yet another aspect of the case which it would not be out of place to consider here. The resolution of the respondent Committee referred to above simply says that the services of Shri Rishi Ram, the present workman were not required. If, it be assumed for the sake of argument, that the work in the Octroi Department did not justify the existing strength of the Octroi Moharirs even then by application of the well recognised rule of "Last come First go" the juniormost Octroi Moharir could have been retrenched on payment of retrenchment compensation as required by law. Shri Rishi Ram was certainly not the juniormost Octroi Moharir and, therefore, the question of his being brought under retrenchment does not arise. Even if he was so the termination of his services was not effected by satisfying the requirements of law regarding payment of retrenchment compensation, etc. Moreover, the vacancy caused by the termination of service of Shri Rishi Ram was filled up some time later by making the fresh appointment of Shri Om Parkash Chaturvedi, who is still working, in complete disregard of the length of service and right of seniority of Shri Rishi Ram.

So, taking into consideration all the facts and the circumstances of the case discussed above and judged from whatever angle, I am of the considered view that the impugned order of the termination of the services of the present workman is simply tantamount to unfair labour practice on the part of his employer which is not permissible under the common law and offends the concept of social justice which has since become an integral part of industrial adjudication. This order, which purports to have been passed by way of discharge simpliciter, who so ever simple and innocent looking it may appear to be does amount to an order of termination of the service of the workman concerned without any rhyme, reason or justification and as such it deserves to be struck down. The learned representative of the respondent Committee has not been able to satisfy me to the contrary. Issues Nos. 4 and 5 are, therefore, decided against the respondent Committee and in favour of the workman holding the impugned order of the termination of his services to be not justified and in order, and in the result, he is entitled to reinstatement with continuity of his previous service and full back wages, keeping in view his sworn testimony that he has not been gainfully employed anywhere which stands altogether un rebutted. The award is made accordingly. The workman is also entitled to Rs. 100 as the costs of the present proceedings.

Dated, the 25th March, 1975.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 652, dated the 31st March, 1975.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated, the 31st March, 1975.